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NEPAL'S ROAD TO FEDERALISM From the Perspective of Grassroots Democracy Damodar Adhikari

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Damodar Adhikari, PhD

Abstract

After 12 years of armed conflict and another decade of political uncertainty, Nepal recently moved from a century long centralized system of governance to a more decentralized, cooperative federal system. The 2007 Interim Constitution transformed Nepal into a Federal Democratic Republic. In September 2015, a new constitution written by the Constituent Assembly in its second attempt, was promulgated, which recognizes Nepal as a secular, inclusive, multi-ethnic and federal country.

The federal system is clearly defined in the new Constitution of 2015. The Constitution established a federal structure with multi-level governance consisting of three spheres of government – Federal (*sangh*), State/Province (*pradesh*) and Local Level (*palika*). Each sphere of government has exclusive power in some areas and concurrent powers in others. All levels are expected to work in harmony as per the constitutional principles of cooperation, coordination and coexistence.

The country is at an early stage of implementing its federal structure, creating and adjusting its institutions and aligning staff at different levels. The process has accelerated after the elections at all three levels of government – which were completed in 2017 and 2018 in phases. However, the country has been facing a number of challenges to implement federalism mainly due to the centralized mind-set of leaders and bureaucrats, unitary organizational structure, and legal framework. Service delivery mechanisms at different levels have been seriously disrupted and access to and quality of services have also been deteriorated during the transition phase of federalism, largely due to confusion in roles and responsibilities among different spheres of government, staff adjustment and transfer, new provincial government set up in place for the first time, and resistance to transfer of authority and resources from the center to provincial and local level governments.

This book focuses on selected critical issues and challenges that are vital to the success of the federal system of government and which need timely attention to establish a functional federal system. These issues and challenges are prioritized and chosen from a long list that have emerged in the context of the implementation of the cooperative type of federalism in Nepal. The main issues and challenges that are analyzed in this book include: (a) overlap and confusion in functions and responsibilities; (b) service delivery interruptions; (c) intergovernmental relation and cooperation; (d) policy, institutional and legal framework; (e) resource mobilization and financial autonomy; and (f) participatory planning, budgeting and implementation at local level.

It is notable, in case of Nepal, that transition to the federal system is not the product of a long evolutionary process but a part of the grassroots-led reaction to the century-long centralized system. Therefore, the federalization process does not have a specific evolutionary path and learning experience in the country-specific political, cultural and administrative context. For instance, no one thought it was necessary to conduct a background study on the scientific basis of the federal system as a part of the preparation for its implementation nor was there any common understanding and shared vision among major political parties about what it was and how it was to be implemented. Federalism came into effect almost overnight together with the new constitution without any preparation for transition management. Therefore, Nepal's federalism process is vulnerable, and it can be derailed, manipulated and influenced by interest groups during the period of implementation if it is not managed effectively toward the desired direction as envisioned in the new constitution.

This book includes three case studies (Germany, Brazil and South Africa) that have the potential to convey some lessons that can potentially benefit Nepal's federalism process. These case studies have been analyzed from the perspective of exploring and drawing useful lessons for Nepal. The experience of case countries and lessons are included on the second last section of the book. The book also includes some experiences and lessons from the decentralization process of other countries.

Looking at the federal systems around the world, it can be said that every federal system has its own organic rules and practices. The federal system has been shaped by the socio-cultural and political context of each country as well as its history. Constitutional culture and the rule of law tradition are dominant factors for determining the institutional structure and character. Every federal system is in developmental mode on a continuous basis; as a result, there are many hybrid models of federalism and one is not fully comparable with another. In recent decades, constitutional recognition of local governance and strengthening of grassroots democracy through it by utilizing the local social capital has become a new phenomenon in the federalist world.

In a nutshell, this book aims to contribute to Nepal’s nation-building process firstly by discussing key issues and challenges that have emerged in the federalism process. Secondly, it offers some key insights and lessons from other countries from which Nepal can learn to adapt a more devolved federal system. Thus, grassroots democracy can be fostered in the future creating a solid foundation for more a democratic, prosperous and resilient society. This might be the first research-based book to specifically address the key issues and challenges of federalism in a comparative basis since the introduction of federalization in Nepal. It also intends to contribute to the existing body of knowledge by documenting and offering Nepal’s decentralization experience, federal constitutional provisions, its practice and learning.

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NEPAL'S ROAD TO FEDERALISM

From the Perspective of Grassroots Democracy

Damodar Adhikari, PhD

ONLINE Available

For International Readers

Available at: https://www.ebay.com/itm/283731272568

For Readers in South Asia

https://www.pilgrimsonlineshop.com/8524-nepals-road-to-federalism-from-the-perspective-of-grassroots-democracy.html

For Readers in Nepal

https://thuprai.com/book/nepals-road-to-federalism/

1 Introduction

1.1 Context, background and purpose

After 12 years of armed conflict and another decade of political uncertainty, Nepal moved from a century-long centralized system to a more decentralized, cooperative federal system of governance since the enactment of the new constitution in 3rd September 2015.

Nepal did not have an elected government for more than a decade. Despite the decade-long armed conflict and political instability, Nepal progressed well in terms of decreasing the incidence of multidimensional poverty in the country. It has decreased significantly in recent years. It has gone down from 59 percent in 2006 to 39 percent in 2011 and further to 29 percent in 2014 with statistically significant progress across all ten indicators used in the recent multidimensional poverty survey. The survey shows that 28.6 percent of Nepal's population is still multi-dimensionally poor (NPC/GoN, 2018).

The Maoist armed conflict started in 1996 and was officially ended in 2006 with the Comprehensive Peace Agreement (CPA). Election of the first Constituent Assembly (CA) took place on April 10, 2008, and the Assembly was tasked with writing a new constitution, while it also acted as the interim legislature for a term of two years (May 28, 2008 to May 27, 2010, then extended for another two years). It was expected to come up with the new constitution at the end of this period ending the long political transition. Unfortunately, political conflicts and disagreements among political parties spiraled up and led to the extension and finally the re-election of the Constituent Assembly. Many people believe that the first Constituent Assembly (CA) failed to write the constitution due to power games and the interests of external forces as they sought to influence the agendas of the political parties.

The second CA election took place on 19 November 2013 and political conflicts among parties continued till the devastating earthquakes of 25 April and 12 May 2015. After these earthquakes, the major political parties came together and promulgated the new constitution in 20 September 2015. The federal system is clearly defined in the new constitution of 2015. The new constitution recognizes Nepal as a secular, inclusive, multi-ethnic and federal country.

According to the new constitutional provisions, Nepal initiated the federalism process by dividing the country into seven provinces and a total of 753 local level government units. The election of local level government bodies was completed after a hiatus of 15 years in three phases on 14 May, 28 June, and 18 September 2017 respectively. Then the election of federal and provincial level took place in two phases on 26 November and 7 December 2017. The 2017 election was the first one to take place after the decade long political transition in the country.

The process of federalization has been accelerated after the election of all three spheres of government (local, provincial and national). Thus, Nepal is at the early stage of implementing its federal structure, creating and adjusting its institutions and aligning public service staff at different levels. The country, however, has been muddling through

the process and it is facing a number of issues and challenges, mainly generated by the feudal mindset of the leaders and bureaucrats, a unitary organizational structure, and centralized legal frameworks.

It is important to note that Nepal's federalism is not the product of its own evolutionary process, but a part of the political reaction to a century-long centralized system spurred, as some believe, by the interest of external forces. Earlier, the country had tried to decentralize the public affairs, but it was done in piece meal basis and was considered largely ineffective. Therefore, the federalization process does not have a context-specific evolutionary path, in-country experience and learning.

There was neither any background study conducted on the scientific basis of federalism as a part of a preparation for its implementation, nor was there any common understanding and shared vision among major political parties on this important issue. Federalism came into effect almost overnight together with the new constitution without giving any time for a smooth transition. Therefore, Nepal's federalism process is vulnerable, which could be derailed, manipulated and influenced by different interest groups during the period of implementation.

This book focuses on a few critical issues and challenges that have been surfacing over the course of implementing the federal system (2015-2019) based on its new constitutional provisions. The issues and challenges discussed in this book are critical to manage the transition and establish a functional federal democratic system in the country. These issues and challenges have been chosen from a long list that have emerged in the context of the implementation of the federal system in Nepal. The book also includes three case studies from Germany, Brazil and South Africa that have the potential to convey some lessons that could benefit Nepal's federalism process.

The author sincerely believes that this book will contribute to the understanding of the concept and key elements of decentralization, democratic governance and the federal system in general with some useful lessons from the case studies elaborated in the book. It is also expected that the book will help government officials and other stakeholders to lead the federalism process in the desired direction. Additionally, the book will contribute to knowledge about how to institutionalize the federal system in favor of fostering grassroots democracy, utilizing and strengthening the social capital of Nepali society, improving service delivery, and harmonizing the relationship among different levels of the government in the long run.

1.2 Research methodology and approaches

The following are the research methods and approaches that were used to come up with the argument and findings of the book.

1. **Media monitoring and document review:** National daily newspapers were reviewed to learn about the emerging federalism related issues and challenges. These issues and challenges were noted, compiled, consolidated, prioritized and grouped under broad categories. Causes and linkages of these issues and challenges were also identified to

establish a logic and their potential implications. Available federalism related documents were also reviewed, and these issues and challenges were interfaced, compared and further validated before proceeding for analysis.

2. **Consultation with stakeholders:** Before finalizing the issues and challenge for further research, concerned officials at federal[1], provincial[2] and local levels[3] were consulted and issues and challenges were further discussed with them to collect their views and also learn about progress updates on their efforts in addressing or resolving the issues and challenges.
3. **Field observation and consultation:** A few urban and rural municipalities and two provinces were visited to observe their work and service delivery process. Interactions were held with concerned officials on random basis who were available during the visits. Based on the above steps, a conceptual framework was prepared for discussion with the mentor and for literature review and desk research.
4. **Literature review and desk research:** The conceptual framework was discussed with the mentor and desk research was carried out with his guidance in the Technical University Dortmund, Germany (August - September 2018). The primary purpose of desk research was to review federalism related literatures in general and specific to other countries' constitutional provisions and experiences in implementing federalism that may have the potential to offer some learnings to Nepal. The review process was focused on Nepal's key federalism-related challenges (together with devolution) so that some learning points can be drawn.
5. **Focus group discussion:** Two focus group discussions were carried out in remote part of the Province 5 (in November 2018) to discuss critical issues that are directly related to people's day to day life, which include service delivery, tax related issues, transparency and responsiveness of local government, engagement during the planning and budgeting process.
6. **Key informant interview:** A few federal, provincial and local government officials were contacted for semi-structured interviews. These interviews were focused on collecting their perspectives and their efforts to address emerging issues during the implementation of federalism.
7. **Organization of information, interpretation and analysis:** Information generated and validated from each step above were documented and validated on regular basis. Finally, all information compiled were organized, interpreted and analyzed that finally led to new book chapters.

In a nutshell, Figure 1.1 illustrates the overall research methodology and approaches.

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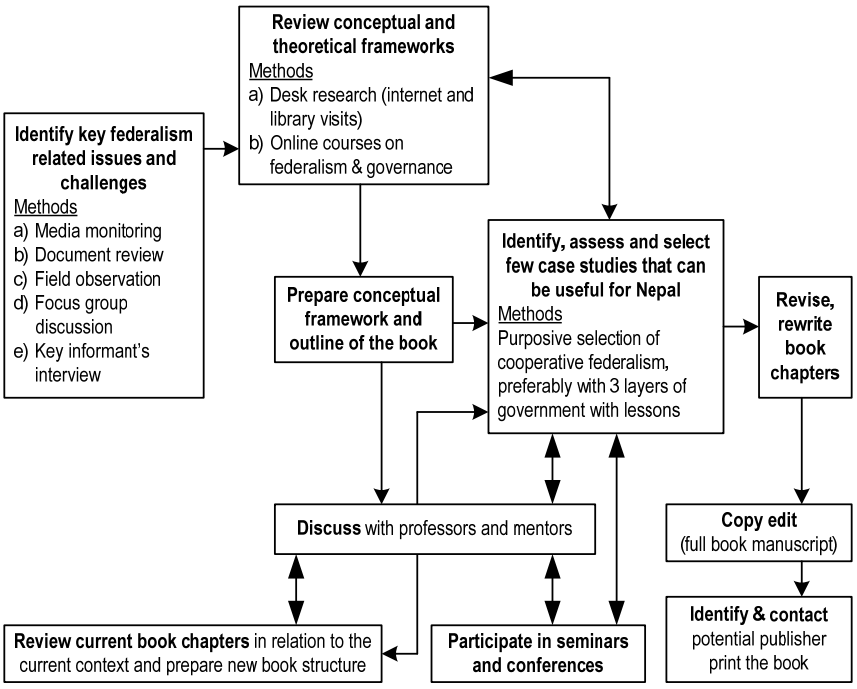
[1] Federal and national level are inter-changeably used to denote the federal or national level government.

[2] The word 'state' and 'province 'are used inter-changeably to denote the same – subnational government.

[3] Local level, local government unit or municipality mean the same, which are used inter-changeably in the book.

Figure 1.1 Research methodology


Review conceptual and theoretical frameworks
Methods
a) Desk research (internet and library visits)
b) Online courses on federalism & governance
Identify key federalism related issues and challenges
Methods
a) Media monitoring
b) Document review
c) Field observation
d) Focus group discussion
e) Key informant's interview
Prepare conceptual framework and outline of the book
Identify, assess and select few case studies that can be useful for Nepal
Methods
Purposive selection of cooperative federalism, preferably with 3 layers of government with lessons
Revise, rewrite book chapters
Discuss with professors and mentors
Copy edit (full book manuscript)
Identify & contact potential publisher print the book
Review current book chapters in relation to the current context and prepare new book structure
Participate in seminars and conferences

Source: Author's construct, 2019

1.3 Primary focus and target readers

The main focus of this book is about the socio-politico-economy of Nepal. The inter-relationship and dynamics of power and participation are the central theoretical concerns of the book. The author believes that the relevance of contemporary theories and concepts reviewed in the book are useful for the current changing context of Nepal. The key literatures related to decentralization, democracy, planning, power and participation are reviewed extensively, which is expected to contribute in strengthening the theoretical and conceptual understanding of political cadres, researchers, policy makers and development workers who are directly or indirectly engaged in or affected by the evolutionary process of federalism in Nepal.

As the parliament is processing a series of legal frameworks to transform the governance system from unitary to federal structure, power negotiation process is gradually reaching the point of complexity. The main challenge remains that power from the central government has to be shifted to provincial (subnational) and local government levels that will ultimately affect political, administrative and social life. However, there is ambiguity in the conceptual understanding of decentralization and federalism, participation and grassroots democracy, which are fundamental to prepare the legal and institutional frameworks. More specifically, the conflicts between different models of decentralization

– de-concentration versus political decentralization that determines, ultimately, the dynamics of power and participation.

Since participation encourages sharing of power, it, in turn, may challenge the functions and responsibilities of elected representatives and also functioning of bureaucrats. Therefore, it does not take place easily in practice. This explains why participation and sharing of power are the central questions of governance in a society like that of Nepal. Meanwhile, largely because political leaders harbor a conception of a representative type of democracy with a centralized mindset, they may hold a feeling that stakeholders interfere and challenge them over managing public affairs, which they have already secured through election.

In Nepal, there are frequent arguments to the effect that devolution is an old-fashioned concept and federalism is the new and better one, a 'panacea' to solve all political problems in the country. Contrarily, existing literature, research and experience of other countries do not support these arguments. If anything, the scientific discourse suggests that, broadly speaking, devolution is the spirit and federalism is the structure. There are some countries in the world that are federal but are not decentralized up to the local government's level (e.g. Australia, and India in terms of local governance until 74th constitutional amendment) and dictatorial in practice (the Russian Federation). It further justifies that there is a need for better understanding to support the federal system for its success in Nepal.

As the federal system is new for Nepal and it is unique in its 'hybrid' form, therefore, Nepali people and their institutions have a limited understanding about the new federal structure. In general, this book aims to focus on devolution within the structure of the federal system, especially local government units, their functions and responsibilities.

In a nutshell, this book aims to contribute to Nepal's nation-building process firstly by discussing key issues and challenges that have emerged in the federalism process. Secondly, it offers insights and lessons from other countries so that Nepal can learn to adapt and develop a more devolved federal system. Thus, grassroots democracy can be fostered in the future creating a solid foundation for a more democratic and resilient society. Probably, this might be the first research-based book to specifically address key issues and challenges since the introduction of federalization in Nepal.

It may also contribute to the existing body of knowledge by documenting and offering Nepal's decentralization experience, federal constitutional provisions, its practice and learning.

1.4 Structure of the book

The main body of the book is composed of five main divisions and twelve chapters or sections.

Part one (chapter 1) is the general introductory section of the book. It includes context, background, the purpose of the book and research methodology and approaches.

Part two (chapters 2-6) includes theoretical discourse related to decentralization as the soul of the federal system and as a key governance approach in the democratic system. This part also includes theoretical and practical perspectives of federalism, key features and parameters of the democratic system, local government's role in a participatory grassroots democracy, multi-level governance with examples from the governance systems of developing and developed countries.

Part three (chapters 7-9) is about Nepal. It includes the discussion of social capital, which is an untapped resource that has a great potential to manage public goods and foster grassroots democracy. In this part, Nepal's efforts of decentralization are discussed from a historical perspective to new federal constitutional settings and multi-level governance. The role of local government in the federal context and key emerging issues and challenges are also discussed in detail in this part.

Part four (chapters 10-11) includes case studies of three countries that have the potential to offer some experience and lessons to Nepal's federalism process. These include Federal Republic of Germany, Federal Republic of Brazil and the Republic of South Africa.

Part five (chapter 12) is the final one, which presents conclusion and recommendations based on Nepal's own federal experience and also from the analysis of the case studies of the above three countries.